

**Speech-Language Pathology and Audiology Board**

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**STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY BOARD
STRUCTURAL PEST CONTROL BOARD
CONFERENCE ROOM
1418 HOWE AVENUE, SUITE 18
SACRAMENTO, CA 95825
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**APRIL 24, 2003
AUDIOLOGY PRACTICE COMMITTEE
MEETING MINUTES**

Committee Members Present

Rebecca Binge, MA, Chairperson
Alison Grimes, AuD
Marcia Raggio, PhD

Staff Present

Annemarie Del Mugnaio, Executive Officer
Candace Raney, Staff Analyst
Lori Pinson, Staff Analyst
George Ritter, Staff Counsel

Board Members Present

Sherry Washington, MA
James Till, PhD
Bruce Gerratt, PhD

Guests Present

Gail Turner, California Academy of Audiology
Yvonne Crawford, Hearing Aid Dispensers Bureau
Robert Powell, California Speech-Language-Hearing Association

I. Call to Order

Ms. Binge called the meeting to order at 2:40 p.m.

II. Introductions

Those present introduced themselves.

III. Development of Reference Materials for Reviewing Audiology Courses for Continuing Professional Development (CPD) Approval

Chairperson Binge introduced the first item on the agenda and stated that the Committee has been charged with developing reference materials on audiology course

content that are acceptable for continuing professional development credit. She explained that the document will serve as a resource tool for Board staff when reviewing continuing professional development course offerings.

Ms. Del Mugnaio stated that the sample course offerings included in the Board packets are courses that staff and/or Board members have grappled with as to whether their content is applicable to CPD requirements for audiology. She further stated that she specifically included information on a CPD course entitled "Acoustic Middle Ear Reflex Lab and Written Test for Certification" offered by the Hearing Healthcare Providers of California (HHP) as the course offering is outside the scope of practice for hearing aid dispensers. She explained that the course was advertised for continuing education credit for both audiologists and hearing aid dispensers and that according to a legal opinion written by George Ritter in June 2001, tympanometry is the practice of audiology and not that of hearing aid dispensing. She further stated that the offering of a "certification" by HHP is problematic as the organization is not authorized to certify an individual to practice a state regulated professional service.

Ms. Bingea stated that the course is a basic audiology course offered in the audiology master's program and is truly not "continuing" education.

Ms. Del Mugnaio stated that the Committee's primary focus is to decide how it will develop the reference materials and to decide what information should be included. She stated that as a secondary issue, the Committee should determine whether our Board has a responsibility to educate HHP that the tympanometry course and related certification offered to hearing aid dispensers may promote the violation of state scope of practice laws.

Ms. Raggio inquired about the Hearing Aid Dispensers Bureau's (HADB) process and guidelines for approved continuing education courses. Ms. Crawford indicated that the HHP course in question was submitted to the Bureau for review however she was not aware of the outcome. Ms. Crawford stated that the Bureau sends courses to subject matter experts for review and determination of approval. She stated that the Bureau utilizes two experts, one of whom serves on the Hearing Aid Dispensers Advisory Committee. Ms. Grimes asked whether the subject matter experts were compensated for their service. Ms. Crawford stated that they are paid a nominal fee and are reimbursed for any mailing expenses.

Ms. Del Mugnaio suggested that the Board and the HADB work together to draft a letter to HHP informing the provider of the state's concerns with the course offering. Ms. Crawford stated that she would check the status of the course approval and inform her manager of the Board's desire to work with the Bureau on developing a letter of education.

A general discussion ensued regarding CPD providers offering courses for licensing renewal that are not specifically in the field of speech-language pathology or audiology but offer information in a related subject area and whether these types of courses should be acceptable. Ms. Washington pointed out the information contained in the recent 2003 mailer that described related CPD courses as those that pertain to case management or alternative treatment procedures.

Ms. Grimes inquired whether teaching a basic audiology course can be applied to her continuing professional development requirements. Ms. Washington added that basic courses may be quality continuing education if a practitioner is transitioning to a different client base or setting and requires a refresher to remain competent.

Ms. Grimes stated that this issue continues to resurface and that the Board has consistently determined that the licensee must bear the responsibility for participating in courses that are applicable to their professional employment and satisfy the Board's requirements. She stated that she is in favor of changing the CPD requirements to require specified hours in certain practice areas.

Mr. Till expressed his desire to see reference materials developed for both speech-language pathology and audiology because the issue continues to plague the Board. He further stated that recorded information would be valuable to both staff and Board members. He suggested that one component of the reference materials might be a definition of "directly relevant" to the practice.

Ms. Del Mugnaio explained that by implementing the reference material staff will have a better understanding of what constitutes acceptable courses. She stated that this may further impact CPD compliance rates with more and/or fewer courses meeting approval criteria. Either being the case, the impact of the reference material will likely result in further modification to the CPD regulations.

M/S/C: Bingea/Raggio

The committee voted to recommend to the Board that the reference material be drafted utilizing the American-Speech-Language-Hearing Association's Knowledge and Skills Acquisition document as a guide and that Ms. Grimes compile the committee members input and draft a document for the July Board meeting. The Committee also voted to recommend to the Board that Ms. Del Mugnaio work collaboratively with the Hearing Aid Dispensers Bureau's Chief to develop a letter of education to the Hearing Health Care Providers of California informing the organization that the course offering entitled "Acoustic Middle Ear Reflex Lab and Written Test for Certification" violates California scope of practice laws.

IV. Legislation

A. AB 510 – Medi-Cal Coverage for Medical Equipment

Ms. Del Mugnaio reported that introduced the bill is an added provision under the Welfare and Institutions Code that redefines the Medi-Cal guidelines for maximum allowable product costs for medical supplies including hearing aids. She further stated that she was not successful in gathering information from the author's office regarding the impetus of the initiative.

Mr. Robert Powell stated that he was aware of the bill and it was his understanding that the bill was not intended to include hearing aids. He stated that the bill is an attempt by the Legislature to curtail an increase in medical supply fraud.

Ms. Del Mugnaio indicated that she would continue to track the bill and report its status at the July meeting.

B. AB 525 – Hearing Aid Dispensing

Ms. Del Mugnaio reported that Assembly Bill 525 (Cohn) is an amendment to Business and Professions Code Section 3365.6 which changes the requirements for an audiologist recommending hearing aids to persons 16 years of age or younger from having to be certified by the American-Speech-Language Hearing Association (ASHA) to the requirement of holding state licensure. Ms. Del Mugnaio stated that the sponsor, Lucile Packard Children's Hospital at Stanford University approached Assemblymember Cohn's staff and requested authorship stating that licensure is a more rigorous standard as it is regulated by a governmental agency unlike that of a national certification.

Ms. Del Mugnaio added that this is an important amendment because it brings the hearing aid dispensers law inline with the audiologists practice act which requires an audiologist to hold a license in order to practice audiology in the state. She further stated that a voluntary certification should not be reflected as a minimum standard to practice when there is a prevailing licensing standard.

Ms. Del Mugnaio referenced the 1999 California Attorney General Opinion included in the meeting packets which concluded that state licensure is equivalent to ASHA certification. She stated however that ASHA sent an opposition letter to Assemblymember Cohn's office indicating that the ASHA certification standards far exceed state licensing standards in most areas.

Ms. Grimes added that the change is timely considering that the Centers for Medicare & Medicaid Services (CMS) has recently announced a proposed rule change regarding audiologist professional standards. CMS is amending the definition in Medicaid to mirror that which already exists in Medicare guidelines to reflect licensure as the provider standard for audiologists.

Ms. Del Mugnaio thanked the California Speech-Language-Hearing Association for their support on record for AB 525.

M/S/C Bingea/Grimes

The Committee voted to recommend to the Board that the Executive Officer draft a letter of support for AB 525 with input from contributing Committee members.

C. AB 532 – School Audiologists Solicitation

Ms. Del Mugnaio stated that the bill amends Education Code 51520 to prohibit audiologists who provide voluntary auditory testing to pupils in a school from soliciting students or parents of students for treatment or consultation of services covered under

auditory testing. Ms. Del Mugnaio stated that after contacting the author's office, Assemblymember Mullin, she was informed that the bill would not move forward and/or may be transferred to another author. The representative from the author's office offered no further details as to the reason for abandoning the bill.

A general discussion ensued as to the contractual arrangement for health professionals to provide services within the public school setting and that most self referral prohibitions are included in some form within the independent contracts.

Ms. Del Mugnaio stated that she would track the bill.

D. SB 174 – Hearing Aids

Ms. Del Mugnaio explained that SB 174 authored by Senator Scott is a repeat measure to last year's bill SB 1638. SB 174 adds a provision to the Health and Safety Code requiring health care service plans to provide coverage, up to \$1,000, for hearing aids to enrollees and subscribers under 18 years of age. Ms. Del Mugnaio referenced the Board support letter written last legislative session for SB 1638 and indicated that if the Board desires she can amend the letter to apply to SB 174.

Mr. Robert Powell indicated that SB 174 was assigned to a UC Study Commission and is not scheduled to continue through the legislative process this year. He added that the purpose of the Study Commission is to determine the cost-benefit analysis for mandating health care providers to cover a range of new services including hearing aids.

Ms. Bingea requested Ms. Del Mugnaio to track the progress of the UC Study Commission and report any findings or available information from the study.

V. Discussion of Issue Regarding “Unbundling” of Services Rendered From the Sale of a Hearing Aid

Ms. Del Mugnaio directed the Committee members to a letter included in the meeting packets written by legal counsel George Ritter in response to a question from a licensee regarding the issue of unbundling costs associated with the sale of a hearing aid. She also referenced a legislative bill SB 648, authored by Senator Battin, which is an attempt to amend the Song Beverly Act by enabling hearing aid dispensers to retain 15% of hearing aid device sales should the consumer return the device and/or enable the dispenser to charge a nominal fee for readjustments to the device during the warranty period.

Ms. Grimes stated that the Song Beverly Act has been interpreted to prohibit dispensers from retaining any fees associated with the dispensing of a hearing aid if the device is returned, including ear molds, batteries, the hearing aid evaluation, and the hearing test.

The Committee discussed the issue of segregating audiology services from dispensing services and concluded that the language in the Song Beverly Act is unclear in terms of defining professional services that are not provided solely for the purpose of selling or fitting a hearing aid.

Mr. Ritter indicated that after researching past legal opinions addressing the issue of unbundling, he found all of the opinions to reach similar conclusions in that any service related to the dispensing of the hearing aid should be a refundable service under Song Beverly. He did however state that audiological services do not appear to apply directly to the sale of the hearing device and therefore should not be subject to the same restrictions.

Ms. Grimes stated that many audiologists struggle with the requirement of refunding all costs associated with services provided to a hearing aid patient when those costs are attributed to the audiologist investing a significant amount of time providing treatment, counseling, and rehabilitative services to both the patient and often the patient's spouse.

Ms. Grimes stated that audiologists adopted the existing hearing aid dispenser bundled price model back in the mid-1970s and the model has continued to evolve.

Ms. Del Mugnaio asked Mr. Ritter to identify the steps the profession could take to exclude the audiological services from the mandatory refund provisions that are currently tied to product costs.

Mr. Ritter indicated that in order to address the issue of unbundling, an amendment or modification to the Song Beverly Act in the Civil Code Section would be necessary.

Ms. Bingea added that one advantage of unbundling is to make the delineation of services more clear for the consumer by separating services and product costs.

Ms. Washington pointed out that a consumer protection issue may exist if an audiologist were to limit their professional services and/or time with a patient because of the risk of having to refund all of the costs associated with those professional services.

Ms. Del Mugnaio reiterated that should the Board choose to act on the issue it should clearly be a consumer protection matter.

Mr. Ritter stated that the merits of unbundling are more of a professional matter although there may be consumer benefits.

The Committee concluded that, while there are solid reasons both professionally and practically from a consumer standpoint to unbundle the pricing of dispensing a hearing aid, the arguments for taking such action are heavily weighted in the interest of the professional and therefore should be addressed by the professional associations. The Committee also requested the Executive Officer to track SB 648.

There being no further discussion, Chairperson Bingea adjourned the meeting at 4:40 p.m.

Annemarie Del Mugnaio, Executive Officer